Circle K Corporation *and* Charlotte Moneagle. Case 9–CA–27904

December 23, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On May 28, 1991, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The Respondent hired Charlotte Moneagle on May 15, 1989. In April 1990,[1] Moneagle filed an unfair labor practice charge against the Respondent alleging discrimination in training and promotion because of her history of filing charges with previous employers.[2]

In June, Store Manager Sheila Weatherholt conducted a store meeting in response to the complaints of employees Ron Beard and Jack Applewhite about Moneagle's poor work performance and their threats to quit if something was not done about Moneagle. Moneagle was notified that her performance needed improvement. The same month, the Respondent issued two warnings to Moneagle for cash shortages and noted a ''poor attitude'' in her evaluation. Moneagle filed another unfair labor practice charge alleging discrimination in discipline and evaluation because of her April charge against the Respondent. The Board dismissed Moneagle's April and June charges.

In September, Weatherholt notified Moneagle that she had incurred another cash shortage and that the third warning for this offense was grounds for termination. However, Moneagle thereafter found her mistake and subsequently Zone Manager Bob Herman told Moneagle that no discipline would attach to this third shortage.

Employee Ron Beard testified that Moneagle told him about her warnings and offered to pursue a warning Beard had received, together with her own, through the management hierarchy. Moneagle also told Beard that employees needed to bring in a union to get better working conditions and fairer treatment and that she had discussed this with a person who was going to assist her in the proper procedures. Beard declined Moneagle's assistance with his warning. However, he told Applewhite and Weatherholt about this conversation with Moneagle, informing Weatherholt specifically that he thought Moneagle ''was serious about . . . trying to get either a union or some kind of employee support thing going in the store.''

On September 21, Moneagle distributed the following letter to store employees, posted it at the cash register, and mailed it to other area stores:

Clerk's and Asst. Managers

Do you have any concerns or idea's [sic] for improvements about your job position and/or any of the following:

1.) Wage's [sic] and/or wage increases
2.) Working conditions
3.) Our performance evaluations
4.) Job Security
5.) Hours
6.) Write-ups

We as employee's [sic] must counsel and stand together concerning our employee rights.

If you have a concern or problem or are interested in more information about our protection contact me at:

2012 Deanwood Ave.
Dayton, OH 45410
phone 256–7346
AN EMPLOYEE —
Charlotte Moneagle

Beard testified that Moneagle gave Beard a copy of her letter and told him that ''this was the letter she had been talking about writing and that if I would sign it and encourage other people to sign it, we could proceed along the lines of getting a union into the store.'' Beard declined to sign the letter and told Moneagle that he would ''like to consider it'' but ''would have to see how things developed before [he] made any decision.''

Beard also testified that he showed Moneagle's letter to Weatherholt and told her he thought it was ''the union letter'' and recounted Moneagle's efforts to get him to sign it, specifically Moneagle's urging that if Beard signed the letter ''it could progress.'' Weatherholt told Beard that his cooperation with Moneagle was ''against store policy and store rules.'' Weatherholt herself testified that she interpreted Moneagle's letter as yet ''another way of [Moneagle's] giving me a hard time.'' Weatherholt further testified that employees who discussed Moneagle's letter with Weatherholt ''thought it was a joke, thought it was funny, thought it was another way of Charlotte causing problems.''

On September 25, District Manager Bill Freeman inspected the store. Freeman testified that he was in-

[1] All dates are in 1990 unless otherwise specified.

[2] See *Southland Corp.*, 267 NLRB 303 (1983); *Stop-N-Go Foods*, 279 NLRB 777 (1986).

formed by Weatherholt that Moneagle ''was interfering with the work of her other employees.'' Weatherholt showed Freeman the letter Moneagle had circulated and, according to Freeman, told him ''the situation had become intolerable and something needed to be done about it.'' Freeman consulted his superiors and on September 26, met with Zone Manager Bob Herman and Moneagle. Freeman asked Moneagle whether she had written the letter. When she acknowledged that she had, he discharged her, citing the employee handbook's provision for discharge on the first offense for ''threatening, intimidating, coercing or interfering with other employees.''

Discrediting Moneagle's claim that she contacted a union, the judge found that Moneagle did not engage in union activity.[3] He also found that Moneagle did not engage in concerted activity. Rather, he concluded that Moneagle acted in her own interest, without the support or consent of other employees, and that her conduct was undertaken in bad faith.

The General Counsel excepts. He contends that Moneagle's stated intent to organize a union and distribution of the letter constituted both union activity and protected concerted activity. The General Counsel also argues that the judge erroneously discredited Moneagle based on her employment application, and erroneously ascribed bad faith to her conduct based on the subjective opinions of her fellow employees.

For the following reasons, we agree with the General Counsel's contention that Moneagle engaged in protected concerted activity and that her discharge for that activity violated Section 8(a)(1) of the Act. We have previously explicitly adopted[4] the Third Circuit's comments in *Mushroom Transportation*[5] defining the scope of ''concerted'' activity:

> [A] conversation may constitute a concerted activity although it involves only a speaker and a listener . . . [when] . . . it was engaged in with the object of initiating or inducing or preparing for group action or had some relation to group action in the interest of the employees.

We find Moneagle's conduct satisfies this definition of concerted. The record shows[6] that Moneagle twice engaged her fellow employee, Ron Beard, in conversations about conditions of employment that affected the store's employees. In the first instance, she discussed disciplinary warnings with Beard and offered to undertake a joint appeal to management. She also told Beard that employees needed to bring in a union to get better working conditions and fairer treatment. In the second instance, she gave Beard a copy of her letter calling for group solidarity among employees with respect to their concerns and ideas for improvements in wages, hours, working conditions, performance evaluations, and disciplinary warnings. She asked Beard to sign her letter and to encourage other employees to sign it so that employees might get a union into the store. Moneagle thereby engaged in an initial call to group action concerning terms and conditions of employment. Moneagle did not have to engage in further concerted activity to ensure that her initial call for group action retained its concerted character.[7] Neither did Beard have to accept Moneagle's invitation to group action for the invitation itself to be ''concerted'' within the meaning of Section 7.[8]

We conclude that the judge erroneously relied on the subjective opinions of Weatherholt and Moneagle's fellow employees in determining that Moneagle acted in bad faith to protect herself against discharge for poor work. What Moneagle's fellow employees may have thought about her motives has little bearing on whether Moneagle's activity was concerted. Employees may act in a concerted fashion for a variety of reasons—some altruistic, some selfish—but the standard under the Act is an objective one. See *Ohio Valley Graphic Arts*, 234 NLRB 493 (1978). Under that objective standard, Moneagle's September 21 letter to the Respondent's employees and her conversations with employee Beard, on their face, were concerted. They solicited group action and invited the backing of the Respondent's employees for efforts to improve their wages, hours, and other terms and conditions of employment. See *Mushroom Transportation Co. v. NLRB*, supra.[9] Under that standard, Moneagle's letter and

[3] The judge noted that: (1) Moneagle's claim was uncorroborated; (2) she engaged in no action such as obtaining and circulating union cards; (3) the union she claimed to have contacted, the Teamsters, is precluded from organizing store employees under the agreement for its readmission to the AFL–CIO; (4) the letter she circulated to employees does not mention a union; and (5) she falsified her employment application with respect to why she had left her prior employment at Southland (Moneagle wrote the she left Southland because of ''Illness in family.'' In fact, she was fired from Southland, but filed charges with the Board and later received $18,000 in backpay. The Respondent does not contend that it was unaware of Moneagle's experience at Southland until after she was discharged from the Respondent or that the falsification of her application played any part in her discharge from the Respondent.

[4] *Meyers Industries*, 281 NLRB 882, 887 (1986), enfd. 835 F.2d 1481 (D.C. Cir. 1987).

[5] *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964).

[6] For our analysis, we do not rely on Moneagle's testimony. We therefore find it unnecessary to reach the General Counsel's exception that the judge erroneously discredited Moneagle with respect to her union activity. Rather, our analysis relies on the testimony of the Respondent's other employees and managers, which the judge either specifically or impliedly credited or which is undisputed.

[7] *Mushroom Transportation Co. v. NLRB*, supra.

[8] *Whittaker Corp.*, 289 NLRB 933, 934 (1988).

[9] The judge ''conclude[d] . . . the letter was not prepared in a good faith effort to help employees, but an attempt [sic] by Moneagle to assist her own personal agenda of avoiding termination by setting up circumstances that could be used as a basis for an approach to the Board . . . .'' The Respondent contends that this conclusion has ample support in the testimony of Moneagle's fellow employees and in the judge's finding that Moneagle was not a cred-

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comments to Beard plainly had an object of inducing group action. That Beard and Moneagle's fellow employees did not respond in a positive fashion to Moneagle's entreaties may demonstrate that Moneagle misperceived her fellow employees' interest in joining together to improve conditions or their willingness to follow her lead. But, this does not make her action any the less concerted. See *El Gran Combo*, 284 NLRB 1115, 1117 (1987), enfd. 853 F.2d 996 (1st Cir. 1988). We find that Moneagle's activity was ''concerted'' activity for mutual aid or protection. Accordingly, we find the General Counsel has established a prima facie case that Moneagle's discharge violated Section 8(a)(1).

We also find that Moneagle's September 21 letter, which we have found to be protected concerted activity, was the sole basis for Moneagle's discharge. The day before Moneagle's discharge, Store Manager Weatherholt had shown District Manager Freeman Moneagle's letter and had commented that ''the situation had become ''intolerable'' and that ''something needed to be done about it.'' The next day, immediately after questioning Moneagle about whether she had written the letter, Freeman summarily discharged her. Other than the September 21 letter, Freeman did not allude to any of Moneagle's conduct during the discharge interview.

According to the Respondent, Moneagle was discharged for violation of a company rule that prohibits employees from ''threatening, intimidating, coercing or interfering with other employees.'' The language of the rule itself is too general to be of assistance in identifying the specific conduct on which the Respondent relied to discharge Moneagle. But the words of Moneagle's final personnel action form leave no doubt that Moneagle's ''interference'' with other employees under the rule was her September 21 letter, which was attached to the form:

> Charlotte was discharged according to rules of conduct on p. 14 of the employee handbook which states that threatening, intimidating, coercing or interfering with other employees [sic] violations will be adequate justification for discharge. *The attached letter was written by Charlotte*. [Emphasis added.]

At the time of the discharge and on its personnel form the Respondent proffered no separate reason for Moneagle's discharge, other than the September 21 letter.[10] Since Moneagle's protected concerted conduct—the September 21 letter—was the sole motivating factor in the Respondent's decision to discharge Moneagle, we need not do the analysis required under *Wright Line*, 251 NLRB 1083 (1980).

We find that the Respondent discharged Charlotte Moneagle for making an initial call to group action on matters of mutual concern to store employees. Moneagle's conduct therefore constituted protected concerted activity and her discharge violated Section 8(a)(1) of the Act.[11]

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ible witness with respect to her testimony about her union activity. We note, however, that when Moneagle first discussed the warnings she had received with Beard, who had also received a warning, she offered to appeal his warning as well as her own. And, while Beard later testified that he thought Moneagle's letter was ''garbage,'' he did not initially reject Moneagle's idea out of hand. Indeed, he told her he would consider supporting her efforts. Beard's undisputed testimony is that he later told Store Manager Weatherholt that Moneagle was serious about ''either trying to get a union or some kind of employee support thing going in the store'' and that he thought that Moneagle's letter was a ''union letter.''

Even assuming that the judge was correct in his speculation that Moneagle's objective in posting the letter was to insulate herself against discharge for poor work, we do not find this fatal to the General Counsel's case. As the Board held in *Ohio Valley Graphic Arts*, supra at 493, ''. . . the fact that [an employee] may have acted for personal reasons . . . does not affect the nature of his conduct.'' The Board also stressed there that such conduct is ''protected without regard to the individual's motivation.'' [Footnote omitted.] The language of the letter and Moneagle's prior conversations with Beard illuminate an objective that contemplates concerted action—a call for the assistance of her fellow employees in improving terms and conditions of employment. Where an employee's objectives in taking certain action may be mixed, and one supports a finding of concertedness, we may not ignore it in favor of one that does not. See *NLRB v. Interboro Contractors*, 388 F.2d 495, 499 (2d Cir. 1967), enfg. 157 NLRB 1295 (1966).

[10] In dictum, the judge stated that the Respondent ''had valid business reasons'' for discharging Moneagle. What those ''reasons'' were the judge does not explain. The Respondent argues, however, that the day before Moneagle's discharge, when Weatherholt showed Freeman the September 21 letter, Weatherholt complained to Freeman that Moneagle was not part of the team and was having a bad effect on the employee team. Weatherholt did not explain what Moneagle had done other than posting the letter to cause this ''bad effect.'' While we do not consider this to be any more than an expression of Weatherholt's concern about the September 21 letter, we shall assume for argument's sake that Weatherholt was also referring to Moneagle's prior work record. Moneagle had been cited for cash shortages on three separate occasions, for having told customers and other employees the store would close, and for a poor work attitude. She had also been the subject of complaints extending over a period of months by other employees who thought that she was not satisfactorily completing the work on her shift, but was leaving it for others on the next shift. While under the Respondent's rules these infractions might well have warranted the Respondent's discharging Moneagle, the Respondent had tolerated Moneagle's foibles for at least 5 months. Further, we note that in August 1989, a little over a year before her discharge, Moneagle had received the Respondent's highest evaluation, ''far exceeds standards,'' and that thereafter Moneagle was offered an assistant manager position, which she declined. In any event, at trial the Respondent did not offer any examples of Moneagle's poor work that were contemporaneous with her discharge and that would have on September 26 tipped the scales against retaining her. Accordingly, we conclude that, in the absence of the letter, the Respondent would have retained Moneagle. See *Colders Furniture*, 292 NLRB 941, 945 (1989), enfd. 907 F.2d 765 (7th Cir. 1990).

[11] We find it unnecessary to reach the issue of whether Moneagle's discharge also violated Sec. 8(a)(3) of the Act, and do not pass on the judge's discussion or conclusions with respect to this issue.

AMENDED CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By discharging Charlotte Moneagle on September 26, 1990, the Respondent engaged in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

REMEDY

Having found that the Respondent has engaged in an unfair labor practice, we shall order the Respondent to cease and desist and take certain affirmative actions designed to effectuate the policies of the Act.

We shall order the Respondent to offer Moneagle immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed, and to make her whole for any loss of earnings and benefits in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Circle K Corporation, Centerville and Dayton, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they engaged in protected concerted activities for their mutual aid and protection.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Charlotte Moneagle immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharge and notify Moneagle in writing that this has been done and that the discharge will not be used against her in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its place of business at 125 Spring Valley Road, Dayton, Ohio, copies of the attached notice marked ''Appendix.''[12] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for activity protected by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Charlotte Moneagle immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed and WE WILL make her whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the discharge of Charlotte Moneagle and WE WILL notify her in writing that we have removed from our files any reference to her discharge and that the discharge will not be used against her in any way.

CIRCLE K CORPORATION

Patricia Rossner Fry, Esq., for the General Counsel.
Arnold Morelli, Esq., of Cincinatti, Ohio, for the Respondent.

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard in Dayton, Ohio, on March 12 and 13, 1991. Briefs subsequently were filed by the General Counsel and Respondent. The proceeding is based on a charge filed October 4, 1990,[1] as thereafter amended, by Charlotte Moneagle, an individual. The Regional Director's complaint dated November 19, 1990, alleges that Respondent Circle K Corporation, of Dayton, Ohio, violated Section 8(a)(1) and (3) of the National Labor Relations Act by discharging Charlotte Monegate because of her union or other protected concerted activities.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in the retail operation of convenience stores in a number of States and it annually purchases and receives goods and materials at Dayton valued in excess of $50,000 directly from points outside Ohio. It admits that at all times material it has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local Union 957, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (the Union), has been, and is now, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

Charlotte Moneagle was hired by Respondent as a part-time salesclerk at its Centerville store on May 15, 1989. In the fall of 1989, Moneagle requested a full-time position and began working full-time in November. In April 1990, Moneagle filed a charge in Case 9–CA–27428 alleging that she had been denied training and promotion to an assistant manager position because she had filed charges against other employers.[2] In May, that charge was dismissed by the Regional Director. In June, after she had received two warnings for cash shortages and been cited for ''poor attitude'' in her evaluation, Moneagle filed a charge in Case 9–CA–27599 alleging that she had been harassed and discriminated against in violation of Section 8(a)(4). That charge was also dismissed.

In August, Moneagle injured her foot at home and was out of work for several weeks. Shortly after she returned to work in September, Store Manager Sheila Weatherholt notified Moneagle that she had another cash shortage which, when combined with her prior warnings on shortages, was cause for termination. With Weatherholt's permission, Moneagle reviewed the records and found the mistake that caused the cash shortage. Weatherholt took no further action and subsequently Zone Manager Bob Herman confirmed to her that she would not be disciplined for that particular shortage.

Moneagle told employee Ron Beard about her written warnings. Previously, Beard had received a warning for having a friend in the store and she offered to appeal his warning as well as her own in a letter she planned to write to management; however, Beard declined her offer. In mid-September, Moneagle allegedly contacted a Teamsters Local 95 representative and another AFL–CIO union representative to get information about organizing Respondent's employees.

On September 21, 4 or 5 days after Weatherholt had told her she could be terminated for any further financial discrepancies, Moneagle composed the following letter to Circle K clerks and assistant managers:

> Do you have any concerns or ideas for improvements about your job position and/or any of the following:
>
> (1) Wages and/or wage increases, (2) working conditions, (3) our performance evaluations, (4) job security, (5) hours, (6) write-ups.
>
> We as employees must counsel and stand together concerning our employee rights.
>
> If you have concern or problem or are interested in more information about our protection contact me at . . . .

The letter closed with Moneagle's name, address, and telephone number. Moneagle posted a copy of the letter near the cash register at the Centerville store and left copies for each employee. She also mailed copies to other Dayton area stores. Moneagle told Ron Beard about the letter. Beard indulged Moneagle and said he would consider supporting her but declined to sign it. Beard then showed Weatherholt the letter and told her that he had spoken to Moneagle about it and said she was serious about getting a union or employee support. Thereafter, on Tuesday, September 26, District Manager Bill Friedman met with Zone Manager Bob Herman and Moneagle, and asked Moneagle whether she had written the above letter, then told her that she was terminated.

III. DISCUSSION

In a discharge case of this nature, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employee's union or other protected, concerted activities were a motiviating factor in the employer's decision to terminate. Here, the record fails to show that the alleged discriminatee engaged in open union activity. In this connection, I cannot find that Moneagle was a credible witness (it was shown that she lied on her employment application and in making certain other statements). Her claim that she contacted the

[1] All following dates will be in 1990 unless otherwise indicated.
[2] See the matters reported in *Southland Corp.*, 267 NLRB 303 (1983), and *Stop-N-Go*, 279 NLRB 777 (1986).

Teamsters Union stands uncorroborated and she took no action consistent with her asserted union contact, such as obtaining or distributing authorization cards. Moreover, it is inherently implausible that this Union had any role in this matter inasmuch as it was established that the provisions governing its readmission into the AFL–CIO specifically prohibited it from organizing store employees. Finally, Moneagle's letter to other employees makes no mention of unions, and, accordingly, I cannot find that Moneagle was engaged in any union activity.

In *Meyers Industries*, 268 NLRB 493 (1984), the Board held that:

> in general, to find an employee's activity to be ''concerted,'' we shall require it be engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself. We thereby overruled those cases which held that the individual assertion of a matter of common concern to other employees constituted protected concerted activity.

Here, it is not shown that Moneagle acted other than in her own interest. Moreover, to the extent that she attempted to portray her actions as being in the interest of matters of common concern to others, this assertion is rebutted by the testimony of other employees who persuasively show that Moneagle was acting only on her own behalf.

Specifically, Moneagle's fellow employees, Jack Applewhite and Ron Beard gave credible testimony that they persisted in making complaints to management against her and, in fact, threatened to quit if something was not done about her adverse effect on their own work. Applewhite, Beard, and other employees, including Assistant Manager Wanda Dougherty, considered Moneagle's letter nothing but a joke and thought that it was just an attempt by Moneagle ''covering her ass.'' Under these circumstances, I conclude, as they did, that the letter was not prepared in a good-faith effort to help employees, but an attempt by Moneagle to assist her own personal agenda of avoiding termination by setting up circumstances that could be used as a basis for an approach to the Board that might forstall any employer exercise of its managerial rights.

Here, it is clear that Moneagle did not act in concert with other employees and otherwise it is not shown that any other employee had ever been sufficiently concerned about working conditions to complain to the Respondent, except to complain about Moneagle.

Based on the complete record, which essentially refutes the testimony relied on in the General Counsel's prima facie presentation, I find that the General Counsel has not met her initial burden by presenting a prima facie showing, sufficient to support an inference that employee's union or other protected concerted activities were a motivating factor in Respondent's decision to terrinate. Accordingly, the record need not be evaluated in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1983), see *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983), to consider Respondent's defense. It is clear, however, that the Respondent is shown to have had valid business reasons not inconsistent with company rules and practices for discharging Moneagle and it otherwise not engage in any acts consistent with the illegal motivation asserted by the General Counsel. Specifically, it is shown that Store Manager Weatherholt testified in Moneagle's behalf in a prior proceeding before the Board that resulted in a favorable award to Moneagle and that she had consistently made efforts at Respondent's store to give her every opportunity to pursue her continued employment. Accordingly, I find that Respondent's conduct refutes rather than supports, the allegations against it and, under all these circumstances, I conclude that the General Counsel has failed to prove that Respondent violated Section 8(a)(1) and (3) of the Act in these respects, as alleged.

CONCLUSIONS OF LAW

1. Circle K Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent has not violated Section 8(a)(1) and (3) of the Act as alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]